

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Columbia Ventures
Broadband LLC and CTC Communications Inc.
d/b/a CT Communications Corp. (U-5532-C) for
a Grant of Authority Pursuant to Public Utilities
Code Sections 851 and 854 Necessary to
Consummate a Transfer of Control.

Application 03-09-011
(Filed September 8, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING MOTION TO FILE UNDER SEAL**

1. Summary

This ruling grants the motion filed by Columbia Ventures Broadband LLC and CTC Communications Corp. d/b/a CT Communications Inc. (collectively, "the Parties") to file under seal Exhibit A of Application (A.) 03-09-011. Exhibit A contains the financial statements of Columbia Ventures Corporation, the parent company of Columbia Ventures Broadband LLC (CVB). The financial information in Exhibit A was not material to the Commission's decision to grant A.03-09-011 in Decision (D.) 03-12-033. Therefore, there is no need to make the contents of Exhibit A available to the public.

2. Background

The Parties submitted Exhibit A to demonstrate that CVB is financially qualified to acquire CT Communications Inc. (CTC) because of the financial resources of CVB's parent company, Columbia Ventures Corporation. In their motion, the Parties claim that it is necessary to place Exhibit A under seal because

it contains “information that is extremely sensitive and confidential.” The parties also claim that the general public has no direct or substantive interest in this information, and that public disclosure of Exhibit A would give competitors an unfair business advantage.

In D.03-12-033, issued on December 15, 2003, the Commission authorized CVB to acquire CTC. The Decision found that CVB was financially qualified to acquire control of CTC. In making this finding, the Commission did not rely on the information contained in Exhibit A.¹

3. Discussion

The purpose of the California Public Records Act and General Order 66-C is to provide “access to information concerning the conduct of the people’s business” while counterbalancing the “right of individuals to privacy.” (Gov. Code § 6250.) In accordance with its purpose, the Public Records Act permits agencies to withhold records from the public when “the facts of the particular case [show that] the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov. Code § 6255.)

One of the Commission’s most detailed analyses of the balancing of the public interest in an open regulatory process with a utility’s desire to shield information from disclosure was a case involving Pacific Bell. (*In re Pacific Bell* (1986) 20 CPUC 2d 232.) In that case, the Commission stated:

PacBell must understand that in balancing the public interest of having an open and credible regulatory process against its desires not to have data it deems propriety disclosed, we give far more weight to having a fully open regulatory process. (20 CPUC 2d at 257.)

¹ D.03-12-033, *mimeo.*, p. 7.

The standard applied by the Commission is a stringent one. The mere fact that a utility labels a statement or a document “proprietary” does not make it so. In the *Pacific Bell* case, the Commission stated:

Certainly there are times to be concerned about full disclosure of proprietary data. Classic examples are customer lists, true trade secrets, and prospective marketing strategies where there is full blown – and not peripheral – competition. To make the assertion stick that there are valid reasons to take unusual procedural steps to keep data out of the public record (e.g., sealed exhibits, clearing the hearing room, or sealed transcripts), there must be a demonstration of imminent and direct harm of major consequence, not a showing that there may be harm or that the harm is speculative and incidental. (20 CPUC 2d at 252.)

The Parties have offered nothing more than an assertion that they will be competitively disadvantaged from the public disclosure of Exhibit A. The asserted harm must be balanced against the public interest in the information. Here, there appears to be no public interest in the information, as no member of the public has asked to see Exhibit A and Exhibit A had no bearing on the Commission’s decision to grant A.03-09-011 or any other issue decided in D.03-12-033. Therefore, the Parties’ featherweight showing is enough to tip the balance in favor of placing Exhibit A under seal.

Therefore, **IT IS RULED** that:

1. The motion of Columbia Ventures Broadband LLC and CTC Communications Corp. d/b/a CT Communications Inc. (collectively, “the Parties”) to place under seal Exhibit A of Application 03-09-011 is granted for two years from the date of this ruling. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except upon execution of an appropriate non-disclosure agreement with the Parties, or on the further order or ruling of the Commission, the Assigned Commissioner,

the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

2. If the Parties believe that further protection of the information filed under seal is needed, they may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date of today's protective order.

Dated January 5, 2004, at San Francisco, California.

/s/ TIMOTHY KENNEY

Timothy Kenney
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Motion to File Under Seal on all parties of record in this proceeding or their attorneys of record.

Dated January 5, 2004, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.